

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13664, of Viola Delespin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variance from the 900 square foot minimum lot area requirements (Sub-section 3301.1) to use the subject premises as an apartment house consisting of three units in an R-4 District at the premises 17 N Street, N.W., (Square 617, Lot 36).

HEARING DATE: November 23, 1981
DECISION DATE: January 6, 1982

FINDINGS OF FACT:

1. The Board of Zoning Adjustment, in Order No. 13438, dated September 1, 1981, denied the application based on the same subject matter, the same site and the same applicant as the subject Application No. 13664. The findings of fact set forth in BZA Order No. 13438 are incorporated herein and made a part of this Order.

2. In Order No. 13438, the Board concluded as follows:

"The Board deferred a decision on the application for two months in the hope that the parties could meet and discuss their concerns and that the pertinent Government agencies would provide the information the Board requested. This has not happened, and the Board is forced to decide the case based on the record before it.

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires proof of a practical difficulty that is inherent in the property itself. The Board concludes that the applicant has not met the burden of proof. The Board is also of the opinion that many factual issues are in dispute in the subject application. Until the applicant can present probative evidence as to the exact nature of the loans, her obligations under the loans and her redresses, if any, the subject application can not be approved on the merits. The Board is aware that the applicant cannot resolve her difficulties by herself and the Board has requested the applicant to seek further assistance through the DHCD. Such assistance should not be limited only to the issue of the rehabilitation loans. The applicant must address the standards set forth in Paragraph 8207.11 to warrant the granting of a variance.

The concerns of the opposition should also be addressed. Accordingly, it is ORDERED that the application is DENIED WITHOUT PREJUDICE to the REFILEING of a subsequent application."

3. On September 25, 1981, the applicant filed the subject application. She requested an expedited hearing which the Board granted.

4. At the public hearing of November 23, 1981, the same basic facts of the prior public hearing were introduced by the applicant into evidence. The Advisory Neighborhood Commission and the N Street Block Club also introduced the same issues and concerns as their basis for opposing the application.

5. By letters of December 7 and 9, 1981, exhibits 29 and 30 of the record, the Board requested the Department of Housing and Community Development to respond to five specific inquiries and concerns of the Board. By memorandum dated December 31, 1981 the DHCD replied as follows:

- a. The borrower/owner is required to occupy the premises as a condition for the granting of the loan. There are no restrictions on the right of transfer of the property by the owner.
- b. The loan does have maintenance requirements for the property. As stated in the Deed of Trust, requirements state that:

"Grantor shall not commit or permit waste, and shall maintain the property in as good condition as at present, reasonable wear and tear expected. Upon any failure to maintain, holder of the note, at its option, may cause reasonable maintenance work to be performed at the cost of the Grantor."

There is no provision for waiver of these requirements.

- c. There are regulations in the loan programs for follow-up inspections of the premises to assure that restrictions and requirements are being observed. The inspections are made by an inspector from the Department of Housing and Community Development (DHCD), Rehabilitation Loan and Grant Division. However, the Department does make a sixty day call back to determine if the demands kept by the contractor involved require any repairs, or when necessary for up to one year after completion of construction.

- d. If the variance is denied by the Board, the Rehabilitation Loan and Grant Division of DHCD will adjust the loan so that payments would be affordable for Ms. Delespin with income from one unit and the balance of the loan that she cannot afford to repay will be provided in the form of a deferral payment which will be due if and when the property is sold.
- e. The monthly payment for the \$40,000 CD loan will be \$184.00 and the payment for the Section 312 loan will be \$111.00. The total amount of \$295.00 includes principal and interest only. Additional insurance costs and taxes will total approximately \$100.00 a month.

6. There were petitions in support of and in opposition to the application submitted to the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires proof of a practical difficulty that is inherent in the property itself. The Board concludes that the applicant again has not met the burden of proof. There is no practical difficulty inherent in the property to support the applicant's proposal to have the site accommodate these units. The site is too small to accommodate more than two units. A variance of 1,085 square feet is too great. If there is any difficulty it is of a personal nature. Such a difficulty is no basis on which to grant an area variance. The Board further concludes that the relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board is constrained to deny this application. The Board is also of the opinion that many of the factual issues as the nature of the loans, the applicant's obligations under the loans and her redresses have now been resolved as evidenced in Finding No. 5. The Board notes that in Finding No. 5, the DHCD stated that it would adjust the loan so that the payments would be affordable to the applicant. The Board therefore, concludes that there is no practical difficulty for the owner arising out of the property.

Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Walter B. Lewis, Connie Fortune, William F. McIntosh Douglas J. Patton and Charles R. Norris to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FIAL DATE OF ORDER: MAR 22 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."